

LAW OFFICES OF HOWARD L. JACOBS

October 17, 2006

VIA FACSIMILE AND REGULAR MAIL

Carmen Frobos
American Arbitration Association
2200 Century Parkway, Suite 300
Atlanta, GA 30345

Re: USADA v. Floyd Landis
AAA Case No. 30 190 00847 06

Dear Ms. Frobos:

I am in receipt of your October 10, 2006 letter in the above-referenced matter requesting the parties' positions as to the location of the hearing and whether the hearing will be open to the public. I have also received USADA's response. Floyd Landis' position is set forth herein.

I. LOCATION

Floyd Landis requested that the hearing be conducted at the Pepperdine University School of Law in Malibu, California. USADA did not object to the hearing being conducted in Malibu, California. Both parties have cited to and relied on R-11 of the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, which provides that the AAA shall make "every effort to give preference to the choice of the athlete or other person charged with a doping offense" in deciding on the locale of the hearing. It is therefore presumed that the joint request of the parties that the hearing be conducted in Malibu, California, will be honored by the AAA. Some of the questions raised by USADA in its letter will be addressed below, although it is noted that much of this information is easily obtainable by simple internet search.

II. OPEN PUBLIC HEARING

In conversations with the undersigned, Mr. Tygart stated that he had no objection to our request for an open public hearing, with the only caveat being that he "would not agree to a circus." This statement is consistent with his public remarks on this topic. See, e.g., ESPN The Magazine and International Herald Tribune articles enclosed herewith at Ex. 1.

Rule R-4 of the AAA Supplemental Rules provides, in pertinent part, as follows: "If the parties agree or the athlete or other person charged with a doping offense requests and the arbitrator agrees, the hearing **shall be** open to the public." [Emphasis added] Here, given that the parties have already agreed to a public hearing, the AAA and/or the arbitrators have no discretion on the threshold issue of whether or not the hearing will be open to the public. The remaining issues therefore involve only the parameters of the open public hearing. In that regard, USADA has raised some questions in its October 17, submission, which are addressed as follows:

1. USADA states that its primary concern is for the hearing to be held in a fair and reasonable manner for the parties and the arbitrators. Respondent Landis does not disagree with this statement. Landis requests that the hearing be as open as possible to both the public and the media, recognizing that there may be some space limitations depending on the interest level. Respondent submits that the decision on these issues is best left to the arbitrators to decide, given the general agreement to an open public hearing.

2. USADA questions what "public" means exactly. Initially, Respondent notes that it simply exercised its option using the exact language of Rule R-4 of the AAA Supplemental Rules. Landis reiterates its request that the hearing be as open as possible to both the public and the media, recognizing that there may be some space limitations depending on the interest level. Respondent submits that the decision on these issues is best left to the arbitrators to decide, given the general agreement to an open public hearing. While the concept of an open public hearing has never been implemented in the anti-doping context, the concept is hardly new or novel, and the arbitrators can draw on extensive guidelines promulgated by the courts (samples of which are enclosed as Exhibit 2).

3. USADA asks whether there are a limited number of seats for the public to use and how will these be divided. There will obviously be a limit on the number of seats. However, it is unknown at present whether the public interest level will exceed the seating capacity. If that is the case, Respondent presumes that this can be adequately addressed by the arbitrators, as it has been by the courts for many years.

4. USADA asks if the athlete is going to waive the applicable sections of the USADA Protocol and the AAA rules that require confidentiality and no public comment. The confidentiality issue is adequately addressed by Rule R-25 of the supplemental rules, which provides in pertinent part as follows: "The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary or the hearing is open to the public as prescribed in R-4." Respondent fails to see how the public comment issue is impacted by the issue of an open public hearing.

5. USADA asks if all of the documents including correspondence, briefs, exhibits and discovery will be made public and how. Respondent submits that this issue can be adequately resolved by the arbitrators, again with possible guidance from the many court guidelines.

III. QUESTIONS REGARDING PEPPERDINE FACILITY

Most of the questions raised by USADA are easily answerable by reviewing Pepperdine's website at <http://law.pepperdine.edu/>. Specific answers where known are provided below:

1. Cost: it is my understanding that there will be no cost. I will confirm this and will amend my submittal if I am mistaken.

2. Location of hotels around law school – see http://law.pepperdine.edu/welcome/visitor_information/hotels.html:

- a. Villa Graziadio, on the Malibu campus, 24255 Pacific Coast Highway, Malibu, CA 90263, (310) 506-1100, **Rate: Starting at \$179.
- b. Malibu Beach Inn, 22878 Pacific Coast Highway, Malibu, CA 90265, (800) 4-MALIBU, (310) 456-6444,

reservations@malibubeachinn.com. The Malibu Beach Inn is conveniently located about half a mile from the University. This luxury hotel offers full amenities and ocean front balconies with all rooms. **Rate: Starting at \$189

c. Casa Malibu Inn, 22752 Pacific Coast Hwy., Malibu, CA 90265, (800) 831-0858, (310)-456-2219; **Rate: Starting at \$99. Located 2.6 miles from law school.

3. Set up of the proposed room, breakout rooms, etc. There are two possible rooms that will be made available for the hearing: a mock trial courtroom [seating capacity approximately 160] and a mock appellate courtroom [seating capacity approximately 350-400; for photo see Mendenhall Appellate Courtroom in campus virtual tour]. Both rooms will far surpass facilities selected at any of the doping arbitrations in which I have participated, in the areas of general set-up, space, comfort, and technology [including video and audio teleconferencing capability, and full audiovisual equipment and support]. Breakout rooms will be made available to the parties and arbitrators, consistent with past arbitrations. The law school has numerous copy and fax machines that will be available to the parties and arbitrators, as needed. I will try to obtain more detailed information and photographs, which will be provided to USADA and AAA once received. A virtual tour of the facility can be found at <http://law.pepperdine.edu/>. However, as stated above, the facilities will far exceed those of any AAA, law firm or hotel setting which I have experienced at past arbitrations.

4. "Circus" issue. Respondent is not quite sure what USADA meant by this comment, however, Respondent is equally interested in ensuring that the proceeding is afforded the seriousness that it deserves. Pepperdine Law School is access-controlled by security guards at each access point. This should alleviate any concerns that USADA has in this regard.